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S-7-04

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PTO/SB/61 (11-03)

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

First Named Inventor: Jack V. Smith

Art Unit: 1639

Application Number: 09/829,563

Examiner: Epperson Jon, D.

Filed: 04/11/2001

Title: Methods for assaying biological and other constituents
using synthetic nucleounits in lateral flow, liquid and dry

Attention: Office of Petitions Chemistry techniques

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (703) 305-9382.The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by
the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the
period set for reply in the Office notice or action plus any extensions of time actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.**

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed
before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee☒ Small entity - fee \$ 55.00 (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.☐ Other than small entity - fee \$ _____ (37 CFR 1.17(l)).**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in the form of
Notice of Appeal (identify the type of reply):☐ has been filed previously on _____.☒ is enclosed herewith.

B. The issue fee of \$ _____

☐ has been filed previously on _____.☐ is enclosed herewith.

05/11/2004 AWONDAF1 00000057 09829563

02 FC:2452

55.00 0P

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

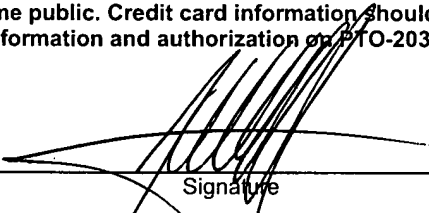
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05/03/2004

Date

828-650-0409

Telephone Number


Signature

Jack V. Smith

Typed or printed name

P.O. Box 156

Address

Arden, NC 28704

Address

- Enclosure ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unavoidable delay
- ☐ _____


CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

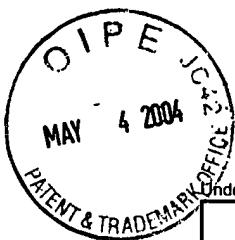
05/04/2004

Date


Signature

Jack V. Smith

Typed or printed name of person signing certificate



**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

5/3/2004
Date

[Signature]
Signature

Registration Number, if applicable

JACK V. Smith
Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

1. On 01/13/2004 Applicant contacted the current Examiner to inquire about the OA dated 01/10/2004 and requested that Examiner let the applicant know when the last formal OA from the USPTO was in this case so the Applicant could verify the dates with his records (note: this Examiner had replaced the original Examiner in this case). The Examiner **refused** to give this date to the applicant. This was the first time in over 15 years of filing applications with the USPTO that the Applicant was refused assistance from the PTO. The Examiner apparently misinformed the Applicant as to the status of the case as the foregoing will illustrate. The applicant was informed by the Examiner at this time that the application was under **final rejection** and about to go abandoned and that the applicant has only 3 choices a) Abandon the patent b) File an RCE or c) File an appeal. The applicant proceeded to file an RCE with response and extension as suggested by the Examiner after which the Applicant received a response from the PTO requesting a reply to accompany the RCE.
2. The RCE, response and extension were filed on 01/23/04. See attached documents.
3. On 4/9/2004 the Applicant was contacted by the Examiner and requested to fax to the Examiner a copy of the extension? It is still not apparent as to why the Examiner needed a copy of the extension other than the obvious mis-management of this case.
4. On 04/13/04 the Applicant contacted Andrew Wayne (Epperson's Supervisor) and Mr. Wayne informed the Applicant at this time that the application was not abandoned and that the RCE was accepted and that I could expect an OA on the RCE soon. In addition, the Applicant had talked to Gloria Trammell (Exam Group 1600) who was very helpful and informed the Applicant that the case was not abandoned and that the RCE needed a reply to accompany it to be considered under 37 CFR 1.111. The reply had been sent in originally with the RCE. In any case the Applicant sent the reply in immediately. See attached check cashed by the USPTO for the RCE and extension.
5. The next OA 4/16/2004 on this case that was received by the Applicant stated that the case had gone abandoned. The Applicant followed the Examiner instructions and was assured by the Supervisor that the RCE was proper and in place.
6. An Interview summary 04/08/2004 was included with the last OA dated 04/16/04, which is **PATENTABLY UNTRUE**. The Examiner at the time of the phone interview did not even have a clue as to the presence of the RCE or extension. There was no mention of the case being abandoned. Quite the opposite. The Examiner requested a copy of the RCE and extension and that was all.

The Applicant has chosen to file an **Appeal** in this case. In addition, the Applicant should be returned the RCE fee at the USPTO's earliest convenience. The Applicant would request the proper documentation to file a formal complaint with regards to this application.

(Please attach additional sheets if additional space is needed.)



Auto-Reply Facsimile Transmission

TO:

Fax Sender at 8286502735

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Date Received:

Total Pages:


4/9/2004 1:06:24 PM [Eastern Daylight Time]

12 (including cover page)

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From:	JACK Smith		Date:	4/9/04
Re:	09/829, 563		Pages:	
CC:				
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PAGE 1/12 * RCVD AT 4/9/2004 1:06:24 PM [Eastern Daylight Time] * SVR:USPTO-EPXDF-01 * CNB:8726304 * CSD:8286502735 * DURATION (min-sec):03-40				

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TIME : 04/09/2004 13:11
NAME : SCITECK
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SER.# : BROL1J765480

DATE, TIME	04/09 13:07
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DURATION	00:03:16
PAGE(S)	12
RESULT	OK
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To: Jon Eggeason / Ex Fax: 703-872-9306
From: JACK Smith Date: 4/9/04
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In the United States Patent and Trademark Office

Serial Number: 09/829,563

Appn. Filed: 04/11/2001

Applicant: Jack V. Smith

Appn. Title: Methods for Assaying Biological and other Constituents using Synthetic Nucleounits in Lateral Flow, Liquid, and Dry Chemistry Techniques

Examiner/GAU: Jon D. Epperson

Art Unit: 1639

**Petition for Extension of Time
(Rules 136 and 17(a)-(d))**

Outstanding Office Action Mailed: 09/23/2003

Original Period for Response Expired: 10/23/03

Request for Extension of 3 Month(s) to: 01/23/04

Sml. Ent. Petn. Fee Enc.: \$475.00 for 3 months

Assistant Commissioner for Patents

Washington, D.C. 20231

Sir:

In the above application, applicant(s) respectfully petition that the period for response to the outstanding Office Action indicated above be extended for the additional month(s), also indicated above. A response to such Office Action and the above Petition Fee (Small Entity) are enclosed herewith. (This extension will not extend the time over the statutory period of six months from the date of the Office Action).

Very Respectfully,

Applicant(s): Jack V. Smith

Enc.: RCE Appl / Amendment / Extension Appl

c/o: Jon D. Epperson

Primary Examiner, Art Unit 1639

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Telephone: (703)-308-3989

Commissioner for Patents

Check Number: 1909

Check Date: Jan 23, 2004

Duplicate

Check Amount: \$860.00

Item to be Paid - Description

Discount Taken

Amount Paid

Legal & Accounting Sciteck Inc

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Arden, NC 28704

Wachovia Bank, N.A. 1909
Asheville, NC 28802

Jan 23, 2004

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Memo: RCE & Continuation 09/829,563
Eight Hundred Sixty and 00/100 Dollars

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Commissioner for Patents

Check Number: 1909

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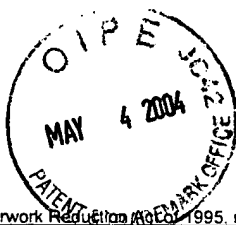
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Discount Taken

Amount Paid

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**Request
for
Continued Examination (RCE)
Transmittal**

Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	09/829,563
Filing Date	04/11/2001
First Named Inventor	Jack V. Smith
Art Unit	1639
Examiner Name	Jon D. Epperson
Attorney Docket Number	

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Rely Brief previously filed on _____
- ii. ☐ Other _____
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- ii. ☐ Affidavit(s)/ Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____

2. **Miscellaneous**

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other _____

3. **Fees**

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, or credit any overpayments, to

- a. ☐ Deposit Account No. _____
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☒ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other _____
- b. ☒ Check in the amount of \$ 860.00 enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	Jack V. Smith	Registration No. (Attorney/Agent)	
Signature		Date	01/23/04

CERTIFICATE OF MAILING OR TRANSMISSION

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Name (Print/Type)	Jack V. Smith	Date	01/23/04
Signature			

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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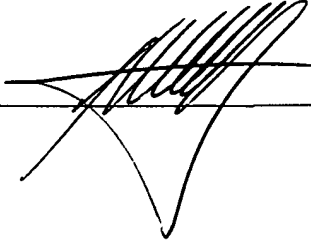
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Date:

1/23/04

Signed:

 _____, Applicant



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,563	04/11/2001	Jack V. Smith		7743

7590

04/16/2004

JACK V. SMITH
P.O. BOX 156
Arden, NC 28704



EXAMINER

EPPERSON, JON D

ART UNIT

PAPER NUMBER

1639

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



Notice of Abandonment

Application No.

09/829,563

Examiner

Jon D Epperson

Applicant(s)

SMITH, JACK V.

Art Unit

1639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

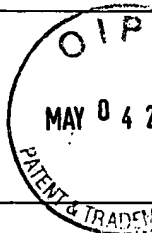
This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 23 September 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☒ A reply was received on 22 January 2004 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Please see attached interview summary.

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Interview Summary



Application No.

09/829,563

Examiner

Jon D Epperson

Applicant(s)

SMITH, JACK V.

Art Unit

1639

All participants (applicant, applicant's representative, PTO personnel):

(1) Jon D Epperson.

(3) _____.

(2) Jack Smith.

(4) _____.

Date of Interview: 8 April 2004.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.

If Yes, brief description: _____.

Claim(s) discussed: _____.

Identification of prior art discussed: _____.


Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Jack Smith filed a response to the 1/14/2004 Non-bonafide non-responsive letter on 1/22/2004. However, this 1/22/2004 response was also non-responsive for the reasons previously indicated (e.g., see Paper No. 9, paragraphs 6-13 and also Paper No. 7, paragraphs 3-8). No other proper response before the statutory period set out in Paper No. 9 was made. Therefore, the case is abandoned. Jack Smith was informed of this status.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required